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09/917,824	07/31/2001	Frank Crupi	T8466250US	5851

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EXAMINER

ADDIE, RAYMOND W

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 09/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/917,824	CRUPI, FRANK
	Examiner Raymond W. Addie	Art Unit 3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 13 February 2002.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-17 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-17 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5

4) Interview Summary (PTO-413) Paper No(s). _____

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION

Claim Objections

1. Claims 1, 16, 17 are objected to because of the following informalities:

Line 1, the phrase "A method of effecting in-situ rejuvenation" should be --A method of in-situ rejuvenation--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites "during step (d) the backhoe apparatus moves laterally...connecting the blended intermediate to the entrance to the pick-up conveyor". It is unclear as to whether the limitation is intended to occur during step d or e. If the step recited in claim 3 occurs during step (d); how is step (e) completed? If the step recited in Claim 3 occurs during step (e); what does the phrase "connecting the blended intermediate to the entrance" imply?

For examination purposes step e is interpreted to require "moving the blended intermediate from proximate the obstruction to proximate the entrance of the pick up conveyor; and claim 3 requires the "blended intermediate to be moved from proximate the entrance of the pick up conveyor to a position within the entrance of the pick-up conveyor.

Claim 4 does not specifically recite an actual method step. The "wherein" statement only states that the backhoe apparatus is rotatably mounted to the asphalt rejuvenating apparatus. Further, it is unclear as to how a method step of mounting a back-hoe to an asphalt rejuvenating apparatus can be incorporated into the method of in-situ rejuvenation of an asphalt paved surface, as claimed, in claims 1 and 3 from which claim 4 depends.

Is the Applicant attempting to claim a method of building an asphalt rejuvenating apparatus? Or is the Applicant claiming the specific method step of rotatably mounting a backhoe apparatus to an asphalt rejuvenating apparatus; and if so, does the suggested method step of Claim 4 need be performed before each rejuvenating project can begin?

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cutler # 4,784,518 in view of Smith et al. # 5,114,267 and Strunk # 5,054,958.

Cutler discloses a method of in-situ rejuvenation of an asphalt-paved-surface (12), with an asphalt rejuvenating apparatus (10) including a pick-up conveyor(40), comprising the steps of:

Heating the asphalt paved surface (28) to form a heated asphaltic material.

Scarifying the heated asphalt to form a scarified, intermediate-asphaltic material (38).

Milling the scarified intermediate, heated asphaltic material to form a milled, scarified, heated intermediate asphaltic material.

Blending rejuvenating fluid with the milled, scarified, intermediate asphaltic material, to form a blended, milled, scarified, intermediate asphaltic material (52).

Moving the blended, milled, scarified, intermediate asphaltic material to an entrance of the pick-up conveyor. See Col. 2, In 36-col. 3, In 7; col. 4, line 40-col. 5, line 40.

What Cutler does not disclose is a method to repave a roadway having at least one imbedded obstruction, such as a manhole shaft.

However, Smith et al. recognizes the problem associated with imbedded roadway obstructions and teaches a roadway paver having a windrow pick-up capability, to accommodate repaving roadways having imbedded obstructions, such as a manhole shaft. What Smith et al. does not teach is providing a back-hoe apparatus to the end of the pick-up conveyor.

However, Strunk teaches a roadway construction apparatus comprising: a pick-up conveyor (20) having a backhoe apparatus (34) for feeding roadway construction materials into the pick-up conveyor for recycling into the prepared roadway. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the method of repaving a roadway of Cutler, with the method of moving a roadway construction material from a surface being prepared, via a back-hoe device, mounted on a pick-up conveyor for recycling into the prepared roadway, as taught by Strunk, and reasonably suggested by Smith et al.

See Smith et al. col. 2, lines 16-23; Strunk col. 4, line 33-col. 5, line 9.

In regards to Claim 2 Cutler discloses the blended intermediate asphaltic material (52) is deposited onto the roadway in a uniform continuous manner. Smith et al. teaches it is known that imbedded roadway obstructions, such as manhole shafts, can be covered and hidden from view when windrowing a recycled paving material. Hence, it is obvious that the method of recycling a roadway of Cutler, would include the step of disposing the blended intermediate asphaltic material (52) in front, to the sides and behind an

obstruction in the roadway, as reasonably suggested by Smith et al. See Cutler Col. 2, lines 35-50; Smith et al. col. 2, lines 16-23.

In regards to Claims 3, 4, 9-12Strunk teaches providing a back-hoe, rotatably mounted to a roadway rejuvenating apparatus, for rotation about a vertical axis so that the back hoe can move laterally, relative to roadway, and hence any obstruction or paving material disposed on the roadway, thereby conveying the paving material proximate the entrance of the pick-up conveyor (20) for further processing and recycling into the roadway. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the method of repaving a roadway of Cutler, with the method step of moving a back-hoe device, laterally, in order to convey a roadway construction material toward an entrance to a pick-up conveyor, as taught by Strunk, in order to process the construction material for recycling into the roadway. See Strunk col. 4, In 33 col. 5, In 2.

In regards to Claim 5, although Strunk teaches mounting the backhoe to the frame of the paving apparatus at (44), and adjacent the conveyor housing (20). Strunk further discloses the backhoe can be used to move paving materials from on the roadway surface, from a trench adjacent the roadway surface, or from a hillside above and adjacent the roadway. Hence, it would be obvious to have the backhoe device mounted to the conveyor housing, in order maximize the range of motion of the backhoe.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the method of repaving a roadway, of Cutler, with the method step of providing a backhoe apparatus mounted on a pick-up conveyor, as reasonably suggested by Strunk, in order to move roadway paving materials from proximate an imbedded obstruction, such as a manhole shaft, to a position proximate to or within a pick-up conveyor, as reasonably suggested by Smith et al., in order to process the paving materials for recycling into the roadway. See Strunk col. 4.

In regards to claims 6, 7, 13, 14 Strunk teaches the backhoe device (34) is retractable and is configured to move vertically relative to the surface being prepared. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the method of repaving a roadway, of Cutler, with the method step of providing a backhoe apparatus mounted on a pick-up conveyor, as reasonably suggested by Strunk, in order to move roadway paving materials from proximate an imbedded obstruction, such as a manhole shaft, to a position proximate to or within a pick-up conveyor, as reasonably suggested by Smith et al., in order to process the paving materials for recycling into the roadway. See Strunk col. 4.

In regards to Claims 8, 15 Cutler discloses the asphalt rejuvenating apparatus comprises:

A plurality of heaters (30, 32) that heat the asphalt roadway.

A raking device (34) dislodges the heated asphalt to form a scarified intermediate (38).

A plurality of mill cutters (56), in the form of a 1st, main mill which grinds the scarified intermediate to form a milled intermediate and;

A 2nd mill (56) for mixing a rejuvenating fluid with the milled intermediate to form a blended intermediate.

In regards to claims 16, 17 Cutler discloses a method of in-situ rejuvenation of an asphalt-paved surface (12), with an asphalt rejuvenating apparatus (10) including a pick-up conveyor (40), comprising the steps of:

Heating the asphalt paved surface (28) to form a heated asphaltic material.

Scarifying the heated asphalt to form a scarified, intermediate-asphaltic material (38).

Milling the scarified intermediate, heated asphaltic material to form a milled, scarified, heated intermediate asphaltic material.

Returning at least a portion of the milled, asphaltic material to the roadway surface.

What Cutler does not disclose is a method to repave a roadway having at least one imbedded obstruction, such as a manhole shaft.

However, Smith et al. recognizes the problem associated with imbedded roadway obstructions and teaches a roadway paver having a windrow pick-up capability, to accommodate repaving roadways having imbedded obstructions, such as a manhole shaft. What Smith et al. does not teach is providing a back-hoe apparatus to the end of the pick-up conveyor.

However, Strunk teaches a roadway construction apparatus comprising: a pick-up conveyor (20) having a backhoe apparatus (34) for feeding roadway construction materials into the pick-up conveyor for recycling into the prepared roadway.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the method of repaving a roadway of Cutler, with the method of moving a roadway construction material from a surface being prepared, via a back-hoe device, mounted on a pick-up conveyor for recycling into the prepared roadway, as taught by Strunk, and reasonably suggested by Smith et al.

See Smith et al. col. 2, lines 16-23; Strunk col. 4, line 33-col. 5, line 9.

In regards to claim 17, Cutler in view of Smith et al. discloses essentially all that is claimed, except for the method steps of moving the heated asphalt proximate to the obstruction and proximate the entrance of the conveyor apparatus, with the backhoe apparatus. However, Strunk discloses the backhoe device can be used to gather a paving material into an area on a roadway to be prepared and to move the paving material within an entrance to a conveyor apparatus for processing said paving material into a roadway of recycled materials. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the method of repaving a roadway of Cutler, with the method of moving a roadway construction material onto and from a surface being prepared, via a back-hoe device, mounted on a

pick-up conveyor for recycling into the prepared roadway, as taught by Strunk, and reasonably suggested by Smith et al.

See Smith et al. col. 2, lines 16-23; Strunk col. 4, line 33-col. 5, line 9.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Manatt et al. # 5,762,446 discloses a method of recycling roadways.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond Addie whose telephone number is (703) 305-0135. The examiner can normally be reached on Monday-Friday from 8:00 am to 2:00 pm, 6-8 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703) 308-3870. The fax phone number for this Group is (703) 305-8623.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.



Thomas B. Will
Supervisory Patent Examiner
Group 3600

RWA
9/13/2002